Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Camionnage GHL Inc. and Transport Laval-Chem Inc.,

complainant,

and

Syndicat des chauffeurs de la compagnie Camionnage GHL inc. et Transport Laval-Chem inc.,

respondent.

Board File: 30059-C
Neutral Citation: 2013 CIRB **699**
November 21, 2013

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. Daniel Charbonneau and Robert Monette, Members.

Parties' Representatives of Record

Mr. Michaël Tremblay, for Camionnage GHL Inc. and Transport Laval-Chem Inc.;
Mr. Marc-André Boivin, for the Syndicat des chauffeurs de la compagnie Camionnage GHL inc. et Transport Laval-Chem inc.

These reasons for decision were written by Mr. Graham J. Clarke.

I. Introduction

[1] On July 12, 2013, the Board received a complaint pursuant to section 50(*a*) of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*) from Camionnage GHL Inc. and Transport Laval-Chem Inc. (GHL) against the Syndicat des chauffeurs de la compagnie Camionnage GHL inc. et Transport Laval-Chem inc. (the union).

[2] GHL claims that the union refused to sign a collective agreement that had been duly ratified by its members. The union, for its part, alleges that GHL failed to bargain in good faith, with respect to the choice of fee guide for dental services. It alleges that GHL refused to provide it with the relevant information on the matter.

[3] The Board has decided to dismiss GHL's complaint and its request for an order to compel the union to sign the collective agreement. The Board considers that a collective agreement is already in force. Signing a document entitled "Collective Agreement" is not an essential condition if the parties have already arrived at an agreement.

[4] The interpretation of the collective agreement, however, is an issue that could be referred to an arbitrator.

[5] These are the Board's reasons for its decision.

II. Facts

[6] In recent collective bargaining, GHL agreed to add a dental benefit plan to the collective agreement, as sought by the union.

A. January 2013

[7] At a meeting held on January 28, 2013, GHL presented an oral overview of the dental benefit plan to the union. The parties disagree on the content of GHL's presentation.

[8] During its presentation, GHL had a dental benefit plan booklet on hand, but refused to give it to the union, stating that it was intended for another employer.

[9] However, GHL promised to send the union a written overview prior to the union's general meetings scheduled for February 9 and 10, 2013.

[10] GHL and the union arrived at a tentative agreement on January 28, 2013.

B. February 2013

[11] On February 8, 2013, GHL emailed the union a document that, it believed, reflected the presentation it had made at the January 28, 2013, meeting regarding the dental benefit plan. The full document reads as follows:

OVERVIEW OF DENTAL CARE COVERAGE

Policy 158962
Division 61
Classes 93-94
Camionnage GHL Inc. Drivers

Deductible per calendar year	
Individual	$50
Family	$50
Reimbursement level	
Routine dental care	100%
Major dental services and supplies	50%
Dental fee guide	**1996 dental care fee guide in effect in the employee's province of residence**
Maximum	**$1,500 per calendar year**

THE FOLLOWING FEES ARE COVERED (SOME EXAMPLES OF SERVICES AND CARE):

Routine

- Diagnostic services
  - Complete oral examination every 36 months
  - Two recall oral examinations every 12 months (only one recall oral examination where a complete oral examination is performed in the same 12-month period)
  - Two recall periodontal examinations every 12 months
- Radiographs (one complete series every 36 months)
- Preventative services
  - Dental polishing (twice every 12 months)
  - Tooth scaling

Major dental services

- Crowns
- Conventional full dentures, conventional or hybrid partial dentures, bridges

(translation; emphasis added)

[12] The union's general meetings were held on February 9 and 10, 2013, as scheduled.

[13] On February 10, 2013, the union sent an email to GHL to advise it that the tentative agreement had been approved by 99% of its members. The parties accordingly initiated the process to fine-tune the wording of the collective agreement to reflect the tentative agreement.

C. June 2013

[14] In early June, an employee contacted the union president about his invoice for dental services. The amounts reimbursed by the insurance company were based on the 1996 dental care fees.

[15] Another employee advised the president that employees aged 65 and over were not covered by the dental benefit plan.

[16] On June 20, 2013, the union sent an email to GHL to object to the use of the 1996 dental fee guide:

> Might I remind you that the bargaining committee presented the contents of the tentative agreement, which reflected the discussions and agreements reached at the bargaining table. You never provided us with the details of the dental benefit plan. When the matter came up at the bargaining table, you had the insurance policy in your hands and we requested a copy. You refused, saying that you would provide us with an overview, which you did. **However, in the overview that you provided, you never made any mention of the 1996 base fee guide, the most critical information about the dental benefit plan. It is clear to us that withholding such information was a conscious decision on your part.** You had to know that we would refuse to agree to that fee guide. The members voted on the information you conveyed to us at the bargaining table in front of the conciliator, which was the tentative agreement. We subsequently exchanged the wording that reflected the tentative agreement.
>
> **We will accordingly meet with you as planned, at 2 p.m. on Friday, to sign the collective agreement but the matter of the insurance will have to be resolved.**
>
> (translation; emphasis added)

III. Positions of the Parties

A. GHL

[17] GHL submits that the union was aware of the details of the dental benefit plan. GHL had presented an oral overview of the plan on January 28, 2013. In addition, its email of February 8 reflected what it had said on January 28, 2013. In its view, the union voted with full knowledge of the facts.

[18] Additionally, GHL reiterates to the Board that the union did not raise any problems between the ratification of the tentative agreement in February 2013 and June 2013.

[19] GHL also submits that a problem relating to coverage for employees aged 65 and older has been resolved. An error was made in the drafting of the contract. Great-West has corrected that error.

B. The Union

[20] The union submits that this issue involves three points: (i) the 1996 fee guide, (ii) coverage for persons aged 65 and older, and (iii) the maximum per person per calendar year.

[21] The union submits that GHL never mentioned the 1996 fee guide at the meeting of January 28, 2013.

[22] According to the union, the tentative agreement of January 28, 2013, did not include the dental benefit plan. Since GHL refused to provide it with a copy of the booklet, the union could not be aware of the information.

IV. Decision

[23] Although the parties requested an oral hearing, the facts as set out in the written submissions are sufficient for the Board to decide the matter.

[24] Pursuant to its discretion under section 16.1 of the *Code*, the Board has decided that it will not hold an oral hearing:

> 16.1 The Board may decide any matter before it without holding an oral hearing.

[25] Section 50(*a*) of the *Code* sets out obligations to be met during a specific time period in the collective bargaining process:

> 50. Where notice to bargain collectively has been given under this Part,
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> > (*a*) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall

> (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and
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> (ii) make every reasonable effort to enter into a collective agreement.

[26] GHL is seeking a declaration from the Board that the collective agreement is in force. In addition, it is seeking confirmation that the said collective agreement contains a 1996 dental care fee guide.

[27] GHL is also seeking a declaration that the union's refusal to sign the collective agreement constitutes a violation of section 50(*a*) of the *Code*.

[28] In its response to the complaint, the union asks that the Board declare that GHL's actions during the January and February 2013 bargaining constitute a breach of the obligation set out in section 50(*a*), even though the union did not file any complaint.

[29] Under section 16(*p*)(vi), the Board has the power to decide whether a collective agreement is in force:

> 16. The Board has, in relation to any proceeding before it, power
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> > (*p*) to decide for all purposes of this Part any question that may arise in the proceeding, including, without restricting the generality of the foregoing, any question as to whether
> >
> > **(vi) a collective agreement has been entered into.**

(emphasis added)

[30] The act of signing a collective agreement is not an essential condition where an agreement already exists between the parties. The Board always considers substance over form.

[31] In *Grain Services Union (ILWU-Canada)* v. *Freisen*, 2010 FCA 339, the Federal Court of Appeal indicated that the facts of each case allow the Board to determine whether a collective agreement is in force:

> [32] The union has provided no case law which supports the proposition that an employer cannot, as a matter of law, reserve the right to ratify a final offer it has made and which has been accepted by its employees. In fact, as noted by the Board itself (Decision at para. 19), the principal case relied upon by the union does not support its position: *Shaw Cablesystems G.P. (Re)*, [2003] CIRB No. 211, [2003] C.I.R.B.D. No. 10, at paras. 19 to 28 ("*Shaw Cablesystems*"). Further, the Board specifically

> acknowledged the existence of cases where a final offer from an employer presupposes that the employer has already approved the contents of that offer. In this case, the evidence, in the Board's view, indicated otherwise. It was therefore reasonable for the Board to assume in this case that there were no legal impediments to the employer reserving the right to have its board of directors ratify its final offer after it had been approved by the employees.
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> [33] *Shaw Cablesystems* correctly sets out at paragraph 33 that a consideration of when a collective agreement is in "operation" for the purposes of applying the provisions of sections 38 and 24 of the *Code* must involve a consideration of when, on the basis of the facts actually before the Board, the collective agreement was intended to and actually did operate.
>
> **[34] Consequently, each case must be considered on its own facts and with regard to its particular circumstances. This is what the Board did here. The Board considered the facts before it and concluded that in the circumstances of this case, the new collective agreement was not "in force" or in "operation" on June 13, 2008 when the application to revoke the certification of the union had been filed. This conclusion "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir, supra*, at para. 47).**
>
> (emphasis added)

[32] As the Board indicated in *American Cartage Agencies Ltd.*, 2006 CIRB 354, the mere act of signing a collective agreement is not an essential condition:

> [69] First, there is no new single document between the Teamsters and American Cartage that is entitled "collective agreement." However, that is not determinative of the issue. **It is a common practice in labour relations for parties in collective bargaining to employ either a memorandum of agreement and/or a letter of understanding. The existence of a collective agreement is therefore not dependent upon the execution of a formal document, which is most often produced at a much later date.** As stated in *Giant Yellowknife Mines Limited* (1976), 13 di 54; [1976] 1 Can LRBR 314; and 76 CLLC 16,002 (CLRB no. 53):
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> > ... In any event, a collective agreement within the meaning of the *Code*, is simply "an agreement in writing... containing provisions respecting terms and conditions of employment and related matters." The *Code* nowhere require[s] the execution of a formal document expressly entitled "collective agreement." Furthermore, the establishment of such a formal and technical requirement would be incompatible with the basic policies and objectives of the *Canada Labour Code (Part V Industrial Relations)*. ...
>
> (emphasis added)

[33] In regard to the complaint in this matter, it seems clear to the Board that a collective agreement between the parties is now in force. The parties reached a tentative agreement in January 2013. In February 2013, 99% of the bargaining unit voted in support of the tentative agreement.

[34] The real question is actually how to interpret the said collective agreement. GHL claims that the dental benefit plan is based on a 1996 fee guide, which includes a maximum amount of $1,500 per person per year.

[35] The union claims that there is no maximum of $1,500 and that the fee guide is consistent with the 2013 dental care fees.

[36] This issue of the interpretation of the collective agreement is the purview of an arbitrator rather than the Board. Arbitrators are sometimes called on to interpret new provisions added to a collective agreement. The parties are not disputing the inclusion of a dental benefit plan in the collective agreement.

[37] However, the terms and conditions of that plan are being disputed. This is exactly the kind of issue that can be addressed by an arbitrator.

[38] The fact that there is a dispute regarding the interpretation of the collective agreement does not indicate to the Board that the union acted in bad faith during collective bargaining.

[39] Furthermore, since the parties entered into a collective agreement in February 2013, the Board considers that a subsequent refusal by the union to formally sign a collective agreement that was already in force is not a violation of section 50(*a*) of the *Code*. In fact, the signing was not essential to entering into the collective agreement.

[40] In its response received on July 31, 2013, the union alleges that GHL violated section 50(*a*) of the *Code* by refusing to provide it with important information regarding the dental benefit plan.

[41] The union alleges that it was not satisfied with the information provided orally by GHL on January 28, 2013, or the document sent on February 8, 2013. If the union wished to file a complaint of unfair labour practice under section 50(*a*) of the *Code*, it should have done so within 90 days of the date on which it felt dissatisfied with the information provided.

[42] Instead, the union waited until a complaint was filed against it, nearly five months later, before challenging GHL's actions during bargaining. Even if the union intended to file its own

complaint in July 2013, such complaint would have been untimely under subsection 97(2) of the *Code*.

[43] For these reasons, the Board dismisses GHL's complaint. The Board finds that a collective agreement has existed since February 2013. A refusal to formally sign that collective agreement in May 2013 is not a violation of section 50(*a*) of the *Code*.

[44] This is a unanimous decision of the Board.

Translation

Graham J. Clarke
Vice-Chairperson

Daniel Charbonneau
Member

Robert Monette
Member